IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/12/2002

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 8223 OF 2000
and
W.M.P.No.12042 OF 2000

P. Rajaram .. Petitioner

-Vs-

1. Director General,
Central Industrial Security Force,
C.G.O. Complex, Lodhi Road,
New Delhi 110 003.

2. Inspector General,
Central Industrial Security Force,
R.C.F., Chembur, Bombay.

3. Deputy Inspector General,
Central Industrial Security Force,
(South Zone) 'D' Block,
Rajaji Bhavan, Besant Nagar,
Chennai 600 090.

4. The Commandasnt,
Central Industrial Security Force,
SHAR Centre, Sriharikotta (A.P.).. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. K.Chandru,
Senior Counsel for
Mr. Ibrahim Ali

For Respondents : Mr.T.S. Sivagnanam, SCGSC

:J U D G M E N T

The petitioner had joined Central Industrial Security Force as Sub Inspector/Executive in 1985 and in course of time he was promoted as Inspector. While he was posted at CISF Unit, SHAR Centre, Sriharikotta,

departmental proceeding was initiated and four articles of charge were framed against him. After enquiry, the petitioner was dismissed from service. The petitioner had filed W.P.No.17284 of 1999 in this Court. Said writ petition was disposed of on 6.12.1999 with observation that the petitioner should prefer appeal before the appellate authority. Thereafter the petitioner preferred appeal before the Inspector General, south West Sector, Central Industrial Security Force, Bombay. The appeal was rejected by order dated 29.4.2000. Thereafter the present writ petition has been filed challenging the order of dismissal as confirmed in appeal.

2. A counter affidavit has been filed on behalf of the respondents refuting the contentions raised in the writ petition.

3. Learned counsel appearing for the petitioner in course of hearing raised several contentions challenging the order of dismissal. Learned counsel for the respondents, however, has submitted that by virtue of The Central Industrial Security Force (Amendment and Validation) Act, 1999 (Act No.40 of 1999) a specific provision has been made for filing revision and since alternative remedy is available, the present writ petition should not be entertained.

4. Learned counsel appearing for the petitioner on the other hand has submitted that in law, Revision is not considered as an alternative remedy and therefore, this technical ground is not available to be raised. He has further submitted that at any rate the writ petition itself having been entertained in the year 2000 and having been remained pending for about 2 years, it would not be proper to consider the bar relating to existence of alternative remedy.

5. As per Section 6 of the Amending Act, in Section 9 of the Principal Act, sub Section (2A) and (2B) have been inserted. Section 9(2A) and (2B) after the aforesaid amendment are as follows :-

" ... (2A) Any enrolled member of the Force aggrieved by an order passed in appeal under sub-section (1) may within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed.

(2B) The authority, as may be prescribed for the purpose of this sub-section, on a revision petition preferred by an aggrieved enrolled member of the Force or suo moto, may call for, within a prescribed period, the records of any proceeding under section 8 or sub-section (2) or sub-section (2A) and such authority may, after making inquiry in the prescribed manner, and subject to the provisions of this Act pass such order thereon as it thinks fit".

A perusal of the aforesaid provisions make it clear that a statutory provision has been made for filing revision by the aggrieved person. Section 9(2B) also confers a suo motu power of revision on such revisional authority.

6. Learned counsel for the petitioner has submitted that the revisional remedy being a discretionary remedy, cannot be characterised as an alternative remedy so as to bar the jurisdiction of the High Court under Article 226 of the Constitution of India. It is no doubt true that in some statutes a suo motu revisonal power is vested in the authority but no right is conferred on an aggrieved party to prefer revision and as such it has been held in some cases that existence of such revisional power cannot be considered as alternative remedy.

7. In the present case, as it is seen from the provisions already extracted, 9(2A) confers statutory right of filing revision and to that extent it cannot be said that the revisional jurisdiction is only a discretionary jurisdiction of the authority. Moreover, in the present case many of the contentions raised by the learned counsel for the petitioner relate to determination of some factual aspects and it would be more appropriate for the revisional authority to go into such aspects as it be in a better position to do so compared to the limited scope for such examination by a writ in Court under Article 226 of the Constitution.

8. Learned counsel for the petitioner has also submitted that the writ petition having been entertained and having been kept pending, the respondents should not be permitted to raise question of alternative remedy at this stage. In the present case, the respondents were not represented at the time when the writ petition was entertained. Therefore, merely because a writ petition was entertained at a stage when the respondents were not heard, it cannot be said that subsequently the respondents would be precluded from raising the question relating to availability of alternative remedy.
Moreover, it is quite possible that the provision relating to alternative remedy of revision which was inserted by amendment on 29.12.1999 was not within the knowledge of the petitioner or the learned judge.

9. For the aforesaid reasons, I am inclined to dispose of the writ petition with the observation that it would be open to the petitioner to prefer revision before the appropriate authority as laid down in Section 9(2A) of the Central Industrial Security Force (Amendment and Validation) Act, 1999. As per the aforesaid provision, a Revision is to be filed within a period of six months from the date of communication of the order. Since a writ petition was filed in May, 2000 and the matter remained pending before this Court, Revision petition if filed within a period of two months from to-day shall be entertained by the revisional authority without raising the question of limitation. It goes without saying that the Revision petition should be disposed of on merit in accordance with law as expeditiously as possible, preferably within a period of four months from the date of receipt of the revision petition.
Subject to the aforesaid observations, the writ petition is disposed of. No costs. Consequently, W.M.P.No.12042 of 2000 is closed.

Index : Yes
Internet : Yes / No
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To

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